

September 30, 2010

Inspector General

United States

Department of Defense



U.S. Army Corps of Engineers Civil Works,
New England District, Complied With
The American Recovery and Reinvestment Act

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Acronyms and Abbreviations

FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FFATA	Federal Funding Accountability and Transparency Act
FPDS	Federal Procurement Data System
OMB	Office of Management and Budget
QMAD	Quantitative Methods and Analysis Division
USACE	U.S. Army Corps of Engineers



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

September 30, 2010

MEMORANDUM FOR DEPUTY COMMANDING GENERAL, U.S. ARMY CORPS
OF ENGINEERS
COMMANDER, U.S. ARMY CORPS OF ENGINEERS,
NEW ENGLAND DISTRICT

SUBJECT: U.S. Army Corps of Engineers, Civil Works, New England District,
Complied With the American Recovery and Reinvestment Act
(Memorandum No. D-2010-RAM-025)

We are providing this memorandum for your information and use. This memorandum provides results from our audit of selected American Recovery and Reinvestment Act projects at USACE Civil Works New England District. We performed this audit in response to the requirements of Public Law 111-5, The American Recovery and Reinvestment Act of 2009. We are making no recommendations and do not require a written response. Therefore, we are publishing this memorandum in final form.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 601-5868.

Patricia A. Marsh
Patricia A. Marsh, CPA
Assistant Inspector General
Defense Business Operations



Results in Brief: U.S. Army Corps of Engineers, Civil Works, New England District, Complied With the American Recovery and Reinvestment Act

What We Did

Our objective was to determine whether the U.S. Army Corps of Engineers, Civil Works, New England District's (USACE New England's) planning and funding of Public Law 111-5, "American Recovery and Reinvestment Act of 2009 (Recovery Act)," February 17, 2009, projects facilitated accountability and transparency in accordance with the requirements in the Recovery Act and the Office of Management and Budget (OMB) guidance.

We made a nonstatistical selection of three projects at USACE New England for review: Blackstone River Fisherville Pond, Shpack Landfill, and Fox Point Hurricane Protection Barrier. For each project, USACE New England personnel used Recovery Act funds to award a task order on existing contracts.

Figure 1. Blackstone River Fisherville Pond



What We Found

USACE New England complied with the Recovery Act requirements for the three projects reviewed. Specifically, USACE New England properly planned, funded, and performed the initial execution of Recovery Act projects. USACE New England also had procedures in place to ensure that contractors properly tracked and reported required information.

Figure 2. Fox Point Barrier



What We Recommend

This memorandum contains no recommendations.

Management Comments

USACE New England had no comments on a discussion draft of this report.

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Introduction

Objective

Our objective was to determine whether the U.S. Army Corps of Engineers, Civil Works (USACE) New England District, implemented Public Law 111-5, “American Recovery and Reinvestment Act of 2009 (Recovery Act), February 17, 2009, in accordance with the requirements in the Act and the Office of Management and Budget (OMB) Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009. Specifically, we determined whether USACE New England properly planned, funded, executed, and tracked and reported the Recovery Act projects reviewed for this audit. See Appendix A for a discussion of our scope and methodology.

Recovery Act Background

In passing the Recovery Act of 2009, Congress provided supplemental appropriations to preserve and create jobs; promote economic recovery; assist those most affected by the recession; provide investments to increase economic efficiency through technological advances in science and health; and invest in transportation, environmental protection, and other infrastructure. The Recovery Act also provided unprecedented efforts to ensure the responsible distribution of funds for the Act’s purposes and to provide transparency and accountability of expenditures so that the public would know how, when, and where tax dollars were spent. Further, the Recovery Act stated that the President and the heads of Federal departments and agencies were to manage and expend the funds made available in the Act to achieve its purpose, which included commencing expenditures for activities as quickly as possible, consistent with prudent management.

Recovery Act Audit Requirements

The Recovery Act and implementing OMB guidance require projects to be monitored and reviewed. We grouped these requirements into the following four phases: (1) planning, (2) funding, (3) execution, and (4) tracking and reporting. The Recovery Act requires that projects be properly planned to ensure the appropriate use of funds. Review of the funding phase is to ensure the funds were distributed in a prompt, fair, and reasonable manner. Review of the project execution phase is to ensure that contracts awarded with Recovery Act funds were transparent and competed and contained specific Federal Acquisition Regulations (FAR) clauses; that Recovery Act funds were used for authorized purposes; and that instances of fraud, waste, error, and abuse were mitigated. Review of the execution phase also ensures that program goals were achieved, including specific program outcomes and improved results on broader economic indicators; that projects funded avoided unnecessary delays and cost overruns; and that contractors or recipients of funds reported results. Review of the tracking and reporting phase ensures that the recipients’ use of funds was transparent to the public and that benefits of the funds were clearly, accurately, and timely reported.

Recovery Act Contracting Requirements

The Recovery Act establishes transparency and accountability requirements. Federal Acquisition Circular 2005-32, March 31, 2009, provides policies and procedures for the Government-wide implementation of the Recovery Act and guidance on special contract provisions. Federal Acquisition Circular 2005-32 amended the FAR and provided interim rules that made FAR solicitation provisions and contract clauses immediately available for inclusion in contracts for Recovery Act work.

The specific FAR Recovery Act requirements are for:

- buying American construction material,
- protecting contractor whistleblowers,
- publicizing contract actions,
- reporting, and
- giving the Government Accountability Office and agency Inspectors General access to contracting records.

Federal Government organizations meet requirements for Recovery Act contract actions by posting information on the Federal Business Opportunities (FBO) and Federal Procurement Data System (FPDS) Web sites. FAR Subpart 5.7, “Publicizing Requirements Under the American Recovery and Reinvestment Act of 2009,” directs contracting officers to use the Government-wide FBO Web site <http://www.fbo.gov> to:

- identify the action as funded by the Recovery Act,
- post pre-award notices for orders exceeding \$25,000,
- describe supplies in a clear narrative to the general public, and
- provide the rationale for awarding any contracting actions that were not both fixed-price and competitive.

FBO is the Federal Government’s central source of Federal procurement opportunities. FBO is a Web-based portal that allows agency officials to post Federal procurement opportunities and contractors to search and review those opportunities. Agencies also post contract award notices on FBO. In addition, to provide transparency, FBO has a separate section identifying Recovery Act opportunities and awards.

FPDS is the Federal Government’s central source of procurement information. Contracting officers enter information, to include the Treasury Account Symbol, in the FPDS for all Recovery Act contract actions. The Treasury Account Symbol enables FPDS to provide transparency by generating and posting a report containing all Recovery Act contract actions.

OMB Recovery Act Guidance

Criteria for planning and implementing the Recovery Act continue to change as OMB issues additional guidance, and DOD and the Components issue their implementation guidance. OMB Memorandum (M-09-15) “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009 (OMB Memorandum M-09-15), provides Government-wide guidance for carrying out programs and activities enacted in the Recovery Act. The guidance states that the President’s commitment is to ensure that public funds are expended responsibly and in a transparent manner to further job creation, economic recovery, and other purposes of the Recovery Act. OMB Memorandum M-09-15 also requires contracting personnel to include appropriate clauses of the FAR in their contract actions. See Appendix B for Recovery Act criteria and guidance.

USACE Recovery Act Funded Appropriations

Under the Recovery Act, Congress appropriated \$4.6 billion to USACE for Investigations, Construction, Operation and Maintenance, Regulatory Program, Formerly Utilized Sites Remedial Action Program, and Mississippi River and Tributaries. Table 1 provides a breakdown of the amount of Recovery Act funds provided for each appropriation.

Table 1. USACE Recovery Act Civil Works Programs

Appropriations	Amount (in millions)
Operation and Maintenance	\$2,075
Construction	2,000
Mississippi River and Tributaries	375
Formerly Utilized Sites Remedial Action Program	100
Investigations	25
Regulatory	25
Total	\$4,600

USACE Mission and Functions

The U.S. Army Corps of Engineers, Civil Works (USACE) provides public engineering services in peace and war to strengthen U.S. security, energize the economy, and reduce risks from disasters. USACE (1) develops and manages U.S. water resources; (2) protects, restores, and manages the environment; (3) responds to disasters and aids in recovery; and (4) provides engineering and technical services. This multifaceted mission is accomplished through partnerships with other government agencies and nongovernment organizations. USACE executes its regional programs through eight divisions and 38 district offices. A ninth division and three embedded districts support operations in Iraq and Afghanistan. This report discusses Recovery Act funded projects at USACE New England District.

Selected Projects at USACE New England

We made a nonstatistical selection of three USACE New England projects funded by the American Recovery and Reinvestment Act, for review: Blackstone River Fisherville Pond, Shpack Landfill, and Fox Point Hurricane Protection Barrier. To complete these projects, USACE New England awarded three task orders on existing contracts. Following is a brief description of each project.

- **Blackstone River Fisherville Pond, Grafton, Massachusetts.** The purpose of the task order was to conduct a feasibility study to determine the cost to remove contamination from the Blackstone River Fisherville Pond. The project had an estimated cost of \$131,000 and was awarded on August 12, 2009 as a fixed-price task order on a previously competed contract.
- **Shpack Landfill, Norton/Attleboro, Massachusetts.** The purpose of the task order was to excavate, separate, process and transport radioactive soil and debris to a Government contracted off-site disposal facility. The project had an estimated cost of \$5 million and was awarded on June 30, 2009 as cost plus incentive fee task order on a previously competed contract.
- **Fox Point Hurricane Protection Barrier, Providence, Rhode Island.** The purpose of the task order was to create design drawings, technical specifications, and construction cost estimates for electrical upgrades at Fox Point Hurricane Protection Barrier. The project had an estimated cost of \$1.5 million and was awarded on October 14, 2009 as a fixed-price task order on a previously competed contract.

Internal Controls on Recovery Act Projects

USACE New England's internal controls over the planning, funding, initial execution, and tracking and reporting of the three Recovery Act projects reviewed were effective as they applied to the audit objectives. We identified no internal control weaknesses.

USACE New England Properly Executed the Recovery Act Requirements

USACE New England complied with the Recovery Act requirements for the three projects reviewed. Specifically, USACE New England properly planned, funded, and performed the initial execution of Recovery Act projects. USACE New England also had procedures in place to ensure that contractors properly tracked and reported required information.

USACE New England Complied With the Recovery Act

USACE New England personnel complied with the following OMB guidance on planning, funding, the initial execution, and tracking and reporting of projects and funds.

- **Proper Planning.** USACE New England personnel selected work for the three Recovery Act projects in accordance with OMB Memorandum M-09-15. The memorandum states that departments and agencies should support projects that have a demonstrated or potential ability to achieve long-term public benefits by investing in an improved quality of life, environmental protection, and other infrastructure that will provide long-term economic benefits. To meet these goals, USACE New England personnel selected the Blackstone River Watershed Restoration to cleanup contamination of the Fisherville Pond; Shpack Landfill to reduce the risk to human health from exposure to contaminants; and Fox Point Hurricane Protection Barrier to protect Providence, Rhode Island from flooding. The purpose of these projects was to provide improved quality of life, support environmental protection, and infrastructure that provide long-term economic benefits.
- **Proper Funding.** USACE New England distributed funds in accordance with OMB Memorandum M-09-15. The memorandum states that funds are to be awarded and distributed in a prompt, fair, and reasonable manner. We reviewed funding authorization documents and confirmed that Recovery Act funds were transferred from USACE Headquarters to USACE New England, and the funds were properly distributed to the Blackstone River Fisherville Pond, Shpack Landfill, and Fox Point Hurricane Protection Barrier projects. All three projects received funds on May 1, 2009, approximately 4 months after the Recovery Act was enacted.

USACE New England appropriately designated and distributed Recovery Act funds for the applicable products and services in its accounting system as well as in the contract solicitations and awards. OMB Memorandum M-09-15 states that agencies must not comingle Recovery Act funds with other funds. Further, OMB Memorandum M-09-15 states that agencies must establish an internal fund code within their financial systems and separately track apportionments, allotments, obligations, and gross outlays to Recovery Act funds. The funding amounts received for the three projects matched the funding authorization documents and

work allowances, and each funding amount had a Recovery Act designation. In addition, all task orders specified which products or services were funded under the Recovery Act.

- **Initial Project Execution.** USACE New England adequately performed initial execution of Recovery Act projects. The Recovery Act projects contained required FAR clauses and were posted to the appropriate websites to facilitate transparency. USACE New England included FAR clauses required for Recovery Act contracts in the three task orders related to the Blackstone River Fisherville Pond, Shpack Landfill, and Fox Point Hurricane Barrier projects. OMB Memorandum M-09-15, section 6.4, states that the FAR was amended to implement contract-related Recovery Act requirements. The revised FAR requires agencies to include contact clauses such as Buy American Requirements for Construction Material and Whistleblower Protections. For a complete list of required FAR clauses reviewed, see Appendix C.

USACE New England consistently posted the three presolicitations on the FBO <http://www.fedbizzopps.gov> and FPDS <http://www.fbo.gov> Web sites in accordance with OMB and FAR requirements. USACE New England's announcements of the three projects on the Web sites included clear and unambiguous information to the public describing services needed. In addition, USACE New England properly identified contract actions as funded by Recovery Act and posted the pre-award notices for orders exceeding \$25,000.

- **Proper Tracking and Reporting.** USACE New England had procedures in place to ensure that contractors properly tracked and reported required information in accordance with OMB Memorandum M-09-15. Specifically, USACE New England contracting officers monitored contractors' input to ensure that required information for the Federal Reporting Web site <http://www.federalreporting.gov> was posted in accordance with OMB Memorandum M-09-15. OMB Memorandum M-09-15 requires contractors to post information on <http://www.federalreporting.gov> regarding the funding agency, awarding agency, and project information for Recovery Act projects. We reviewed the most recent quarterly reports posted by contractors for the Blackstone River Fisherville Pond, Shpack Landfill, and Fox Point Hurricane Protection Barrier projects. We determined that the contractors properly reported the funding agency, the awarding agency, project status, the amount of ARRA funds received or invoiced, and the number of jobs created for the three projects we reviewed.

Summary

USACE New England complied with the Recovery Act requirements for the three projects we reviewed. USACE New England properly planned, funded, performed initial project execution, and ensured contractors tracked and reported data in accordance with OMB guidance; and met transparency goals of the Recovery Act. Therefore, this report contains no recommendations.

Appendix A. Scope and Methodology

We conducted this audit from January 2010 through September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

To accomplish our objective, we audited the planning, funding, and initial project execution and tracking and reporting of Recovery Act projects to determine whether USACE New England complied with Recovery Act requirements, OMB's guidance, the FAR, and DOD implementing guidance. Specifically, we determined whether USACE New England:

- adequately planned selected projects to ensure the appropriate use of Recovery Act funds (Planning);
- awarded and distributed funds in a prompt, fair, and reasonable manner (Funding);
- adequately performed initial execution of the projects selected, to ensure that contracts contained required Recovery Act FAR clauses (initial Project Execution); and
- had procedures in place to ensure that contractors tracked and reported contracts in accordance with OMB guidance (tracking and reporting).

The DOD IG Quantitative Methods and Analysis Division (QMAD) selected projects and locations using a modified Delphi technique, which allowed us to quantify the risk based on expert auditor judgment, and other quantitatively developed risk indicators.

QMAD used additional predictive analytic techniques for public works Recovery Act projects funded directly through USACE. QMAD factored in workload volume, proposed costs, geographic districts, and USACE districts and regions in evaluating the relative risk of problems with oversight and completion.

QMAD did not use classical statistical sampling techniques that would permit generalizing results to the total population because there were too many potential variables with unknown parameters at the beginning of this analysis. The predictive analytic techniques employed provided a basis for logical coverage of not only Recovery Act dollars being expended, but also public works projects managed by USACE.

We made a nonstatistical selection of three projects at USACE New England using the QMD high-risk rating, and we selected projects funded with Operations and Maintenance, Investigations and Formerly Utilized Sites Remedial Action appropriations. The three projects we reviewed were: the Fisherville Pond Project under the Blackstone River Watershed Restoration Contract, the Shpack Landfill, and the Fox Point Hurricane Protection Barrier.

For the three projects, USACE New England personnel solicited or awarded three task orders funded under the Recovery Act. We met with USACE New England personnel to evaluate the type of work performed under the Recovery Act and how this work was funded. We reviewed funding documents that interface with the Corps of Engineers Financial Management System to trace back to the initial Recovery Act funding. Further, we reviewed documentation to include solicitations, Federal procurement Web sites, bid submittals, and contracts, to determine whether USACE New England personnel are implementing the Recovery Act and OMB requirements.

Use of Computer-Processed Data

We obtained hard-copy documentation from the Federal Procurement Data System, Excluded Parties List System, Central Contractor Registration System, Federal Business Opportunities Web site, and Corps of Engineers Financial Management System. We validated data from these computer systems by comparing the data to hard-copy documentation related to the projects selected for review. We also interviewed program officials responsible for reporting on Recovery Act contract actions and for managing Recovery Act funding. From these procedures we concluded that the data we reviewed was sufficiently reliable for our purposes.

Prior Audit Coverage

The Government Accountability Office, the DOD OIG, and the Military Departments have issued reports and memoranda discussing DOD projects funded by the Recovery Act. You can access unrestricted reports at <http://www.recovery.gov/accountability>.

Appendix B. Recovery Act Criteria and Guidance

The following list includes the primary Recovery Act criteria documents (notes appear at the end of the list):

- U.S. House of Representatives Conference Committee Report 111-16, “Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes,” February 12, 2009
- Public Law 111-5, “American Recovery and Reinvestment Act of 2009,” February 17, 2009
- OMB Memorandum M-09-10, “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” February 18, 2009
- OMB Bulletin No. 09-02, “Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations,” February 25, 2009
- White House Memorandum, “Government Contracting,” March 4, 2009
- White House Memorandum, “Ensuring Responsible Spending of Recovery Act Funds,” March 20, 2009
- OMB Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,”¹ April 3, 2009
- OMB Memorandum M-09-16, “Interim Guidance Regarding Communications With Registered Lobbyists About Recovery Act Funds,” April 7, 2009
- OMB Memorandum M-09-19, “Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA),” June 1, 2009
- OMB Memorandum M-09-21, “Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009,”² June 22, 2009
- OMB Memorandum M-09-24, “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds,” July 24, 2009
- OMB Memorandum M-09-30, “Improving Recovery Act Recipient Reporting,” September 11, 2009

- OMB Office of Federal Procurement Policy, “Interim Guidance on Reviewing Contractor Reports on the Use of Recovery Act Funds in Accordance with FAR Clause 52.204-11,” September 30, 2009²
- OMB Memorandum M-10-08, “Updated Guidance on the American Recovery and Reinvestment Act – Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates,” December 18, 2009²
- OMB Memorandum M-10-14, “Updated Guidance on the American Recovery and Reinvestment Act,” March 22, 2010²
- White House Memorandum, “Combating Noncompliance with Recovery Act Reporting Requirements,” April 6, 2010²
- OMB Memorandum M-10-17, “Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act,” May 4, 2010

¹ Document provides Government-wide guidance for carrying out programs and activities enacted in the American Recovery and Reinvestment Act of 2009. The guidance states that the President’s commitment is to ensure that public funds are expended responsibly and in a transparent manner to further job creation, economic recovery, and other purposes of the Recovery Act.

² Document provides Government-wide guidance for carrying out the reporting requirements included in section 1512 of the Recovery Act. The reports will be submitted by recipients beginning in October 2009 and will contain detailed information on the projects and activities funded by the Recovery Act.

Appendix C. Required FAR Clauses for Recovery Act Contracts

	Fox Point Hurricane Protection Barrier	Shpack Landfill Restoration	Fisherville Pond Feasibility Study
FAR Clauses as Required	Electrical Upgrade	Remedial Action Work Plan	Sampling and Testing of Fisherville Pond
FAR 52.203-15 Whistleblower Protection	Y	Y	Y
FAR 52.225-21.22 Buy American Requirements for Construction Material	N/A	N/A	N/A
FAR 52.204-11 Recovery Act Reporting Requirements	Y	Y	Y
FAR 52.212-4 Contract Terms and Conditions – Commercial Items	N/A	N/A	N/A
FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items	Y	N/A	Y
FAR 52.213-4 Terms and Conditions – Simplified Acquisitions	N/A	N/A	N/A
FAR 52.214-26 Audit and Records – Sealed Bidding	N/A	N/A	N/A
FAR 52.215-2 Audit and Records – Negotiation	Y	Y	Y
FAR 52.222-6 Davis-Bacon Act	N/A	Y	N/A
FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components	N/A	Y	N/A

Y = Yes N/A = Not applicable



Inspector General Department *of* Defense

